No. 89-640

In the Supreme Court of the United States

OCTOBER TERM, 1989

MANUEL LUJAN, JR., *et al.*, PETITIONERS

v.

NATIONAL WILDLIFE FEDERATION, RESPONDENT

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF AMICI CURIAE OF THE AMERICAN FARM BUREAU FEDERATION AND THE WYOMING FARM BUREAU FEDERATION IN SUPPORT OF PETITIONERS

JOHN J. RADEMACHER
General Counsel
American Farm Bureau Federation
225 Touhy Avenue
Park Ridge, Illinois 60068
(312) 399-5732

KATHRYN A. OBERLY
Counsel of Record
JOHN E. MUENCH
KERRY EDWARDS CORMIER
JEFFREY M. WINTNER
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 778-0611
Counsel for Amici Curiae

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INTEREST OF THE AMICI CURIAE [1]

The American Farm Bureau Federation (AFBF) is a voluntary general farm organization formed in 1919 and organized in 1920 under the General Not-

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[1] Letters from the parties consenting to the filing of this brief have been filed with the Clerk of this Court. See Sup. Ct. R. 37.

For-Profit Corporation Act of the State of Illinois. AFBF was founded to protect, promote, and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in 50 states and Puerto Rico (including the Wyoming Farm Bureau Federation), representing more than 3.6 million member families. AFBF's farmer and rancher members produce virtually every kind of agricultural commodity produced in the United States.

The Wyoming Farm Bureau Federation (WYFB) is a voluntary, non-profit, general farm organization incorporated under the laws of the State of Wyoming, representing more than 8,000 member families. WYFB's purpose is to represent, service, and protect the interests of farmers and ranchers in the State of Wyoming.

Farm Bureau members have a direct and vital interest in the outcome of this case. The orderly management and use of federal lands, especially in the western region of the United States, is of paramount importance to member farmers and ranchers whose private lands lie adjacent and are often tied economically to such federal lands. Many Farm Bureau members in the western states are adversely affected by restrictions on federal land managers such as those imposed by the court of appeals. Farm Bureau members accordingly have a strong interest in ensuring that the decisions of the federal land managers with whom they must work on a daily basis are not subjected to the uncertainty and vulnerability that flows from permitting challenges to those decisions to proceed simply by virtue of the claim that one of respondent's members uses federal land "in the vicinity" of millions of acres of other federal land.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the limitations that the doctrine of standing and our system of separation of powers impose on the exercise of federal judicial power. Respondent's complaint seeks judicial rescission of more than 1,250 Bureau of Land Management (BLM) land use decisions affecting more than 180 million acres of land throughout the Nation; it also requests an order compelling BLM officials to rescind all internal directives relating to such land status determinations.

The district court granted summary judgment for petitioners because respondent failed to show that any of its members used public land affected by any BLM decision. Reversing, the court of appeals held that the district court should have "presumed" that one of respondent's members uses an affected parcel, and that such presumed use entitles respondent to press its claim for intrusive injunctive relief with respect to all post-1981 land status decisions. This ruling is fundamentally unsound.

A. Article III requires a plaintiff seeking to invoke federal-court jurisdiction to enjoin agency action to demonstrate that the challenged action threatens him with a distinctive personal injury. Where, as here, an environmental organization claims that governmental action has impaired the use and enjoyment of a natural resource, the organization must show that "its members use" that resource. *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972). Moreover, even at the pleading stage, this Court has refused to supply by inference factual allegations necessary to support the plaintiff's personal stake in the litigation. See, *e.g.*, *Allen* v. *Wright*, 468 U.S. 737, 758-59 (1984). The plaintiff himself must allege "specific,

concrete facts" showing the required injury. *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975).

The court of appeals' "presumed" injury theory is utterly inconsistent with these established principles. Beyond this, the court's presumption cannot be reconciled with the dictates of Rule 56 of the Federal Rules of Civil Procedure, which required respondent (as the party having the burden of proof) to adduce sufficient evidence of injury to support a finding in its favor at trial.

B. The court of appeals' further ruling that the presumed aesthetic injury from a land use decision affecting one parcel entitles respondent to seek rescission of all BLM land status decisions rests on a fundamental misconception of the core purposes served by the standing doctrine.

Implicit in the court's decision is the notion that standing rules serve only to ensure vigorous advocacy. Given this minimalist view, the court's presumptive injury theory and its expansive conception of judicial power are unsurprising; vigorous advocacy can be expected from organizations like respondent. In fact, however, "the law of Art. III standing is built on a single basic idea—the idea of separation of powers." *Allen*, 468 U.S. at 752. For that reason, where, as here, a plaintiff seeks the assistance of the federal courts in its effort to reverse hundreds of separate decisions made by the Executive Branch, "the standing inquiry requires careful judicial examination" to determine whether the "particular plaintiff" may press "the particular claims asserted." *Ibid.* And in conducting this inquiry, federal courts are constrained by the principle that federal judicial power should only be exercised " 'as a necessity.' " *Ibid.* (citation omitted).

The court of appeals' decision conflicts with these fundamental principles. To begin with, based on a presumed injury from an isolated land use decision, it permits respondent to use the federal courts as a vehicle for attacking hundreds of BLM land status decisions that have caused it no injury and that are deemed advantageous by those with a direct interest in the lands. Moreover, the sweeping relief sought by respondent would require pervasive judicial oversight of the Executive's performance of its delegated land management functions. Under these circumstances, the structural values protected by the standing doctrine compel the conclusion that there is no "necessity" for the exercise of federal judicial power countenanced by the court of appeals in this case.

ARGUMENT

Article III of the Constitution confines the federal judicial power to "Cases" and "Controversies." The requirement that a plaintiff have standing derives directly from this express limitation. See, *e.g.*, *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). To have standing under Article III, a "plaintiff [must] allege[] such a personal stake in the outcome of a controversy as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth* v. *Seldin*, 422 U.S. 490, 498-499 (1975) (quotation omitted and emphasis in original).

This Court has consistently held that a plaintiff must satisfy a three-part test in order to demonstrate the required "personal stake." First, it must allege a "personal injury" that is " 'distinct and palpable' " as opposed to " 'abstract' or 'conjectural' or 'hypothetical.' " *Allen*, 468 U.S. at 751 (quoting *Warth*, 422 U.S. at 501, and *City of Los Angeles* v.

Lyons, 461 U.S. 95, 101-102 (1983)). Second, that injury must be "'fairly' traceable" to the allegedly unlawful conduct of the defendant. *Allen*, 468 U.S. at 751 (citation omitted); *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982). Finally, a favorable decision must be "likely to * * * redress[]" the injury. *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976). Accord *Allen*, 468 U.S. at 751. Each of these elements must be shown not by conclusory assertions but by "specific, concrete facts." *Warth*, 422 U.S. at 508.[2]

Moreover, "[t]he idea of separation of powers * * * underlies standing doctrine," *Allen*, 468 U.S. at 759, and the application of the standing test in a particular case should be guided by separation of powers considerations (*id.* at 761 n.26). Thus, "[t]his Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court." *Id.* at 754.

The court of appeals' decision manifestly disregards these salutary limitations on the exercise of federal judicial power. To begin with, the court erroneously *presumed* that respondent has a "personal stake" in this litigation. Beyond this, the court impermissibly allowed respondent to use its presumptive aesthetic injury from a single decision affecting a 4,500-acre tract of land to secure citizen standing to subject to federal court supervision hundreds of federal land use decisions affecting 180 million acres of land.

[2] That respondent has invoked the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. § 702, does not relieve it of its threshold obligation to meet the standing requirements of Article III. See, *e.g.*, *Valley Forge*, 454 U.S. at 487 n.24.

I. THE COURT OF APPEALS SHOULD HAVE SUSTAINED THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT BECAUSE RESPONDENT FAILED TO MEET ITS BURDEN OF DEMONSTRATING THAT IT WOULD SUFFER A DISTINCT PERSONAL INJURY FROM ANY DECISION OF THE FEDERAL BUREAU OF LAND MANAGEMENT.

In an effort to establish its organizational standing to challenge the legality of hundreds of Bureau of Land Management (BLM) decisions affecting 180 million acres of federal land, respondent submitted an affidavit of one of its members, Ms. Peterson, which asserted that her "recreational use and aesthetic enjoyment of federal lands * * * *in the vicinity* of South Pass-Green Mountain, Wyoming" are "adversely affected" by a BLM decision "opening up" the South Pass-Green Mountain area to the staking of mining claims. Pet. App. 191a (emphasis added). The South Pass area to which the Peterson affidavit refers comprises 2 million acres, and the challenged BLM decision opened only 4,500 acres to the staking of mining claims. *Id.* at 17a, 34a-35a.

Because respondent's affidavit asserted only that she used lands "in the vicinity" of the 2 million acre tract, and respondent introduced no evidence that she used the small parcel to which the challenged BLM decision related, the district court concluded that respondent had failed to satisfy its burden of demonstrating "injury in fact" from the 4,500 acre land use decision, much less from the "hundreds of decisions

affecting 180 million acres spread over seventeen states." Pet. App. 36a. The district court's decision was plainly correct, and the court of appeals' erroneous ruling to the contrary clashes with settled principles governing standing and summary judgment in the federal courts.

A. In *Sierra Club* v. *Morton*, the Court held that the Sierra Club had failed to establish standing to challenge the Secretary of the Interior's decision to permit development of an area (Mineral King) within a National Park because any "injury w[ould] be felt directly only by those who use Mineral King" and "[n]owhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose." 405 U.S. 727, 735 (1972).[3] *Sierra Club* is fatal to respondent's standing in this case.

As the district court found, respondent made no showing that any of its members use any parcel of land affected by the hundreds of land use decisions challenged by its complaint. The member affidavit on which the court of appeals relied merely alleges use of land "in the vicinity of" a 2 million acre tract, only 4,500 acres (or .225%) of which was opened to mining by the challenged BLM decision. Pet. App. 16a-17a. Respondent made no showing whatever that Ms. Peterson uses any of the affected 4,500 acres. *Sierra Club* leaves no doubt that asserted use of unspecified land "in the vicinity" of 2 million acres

[3] Compare *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669 (1973), in which the Court held that, for purposes of a motion to dismiss, the plaintiffs had satisfied the injury prong of the standing test by alleging that they personally used the "natural resources" that they alleged had been adversely impacted by federal agency action. *Id.* at 678.

does not confer standing to challenge a land use decision affecting a 4,500 acre tract within the 2 million acre area. 405 U.S. at 734-735.

Acknowledging the insufficiency of the Peterson affidavit on its face, the court of appeals resorted to a "presumption" that "the 4,500 newly opened acres included the areas that Peterson uses." Pet. App. 17a. The court reasoned that, "unless Peterson's language is read to refer to the lands affected by the Program, the affidavit is, at best, a meaningless document." *Ibid.* In other words, the affidavit must be read to establish injury because otherwise it would not support standing.

This Court, however, has clearly rejected the notion that a federal court may presume the existence of a constitutionally required injury. Rather, a party seeking to invoke the federal judicial power must allege "specific, concrete facts" that demonstrate the required personal stake in the litigation. *Warth*, 422 U.S. at 508. Not surprisingly, therefore, the Court in *Sierra Club* did not presume that some Club member had used the particular tract of land that was the subject of the challenged agency decision. Nor did the Court in *Allen* presume that "there were enough racially discriminatory private schools receiving tax exemptions in respondents' communities for withdrawal of those exemptions to make an appreciable difference in public school integration" (*Allen*, 468 U.S. at 758)—even though, absent such an allegation, the complaint could fairly be characterized as a "meaningless document."

The injury requirement serves to confine the federal courts to their legitimate judicial functions. The notion, implicit in the court of appeals' presumptive

injury theory, that standing is a "gaming device," *Asarco, Inc.* v. *Kadish*, 109 S. Ct. 2037, 2044 (1989) (opinion of Kennedy, J., joined by Rehnquist, C.J., and Stevens and Scalia, JJ.), by which artful draftsmen may confer the necessary personal stake on organizational bystanders simply cannot be squared with the Article III "case or controversy" requirement.

B. As the Court recently observed, "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 327 (1986) (citation omitted). The court of appeals clearly ignored this admonition.

The "plain language of Rule 56(c) *mandates* the entry of summary judgment * * * against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322 (emphasis added). Thus, to avoid summary judgment, respondent was obligated to "set forth specific facts" (*Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)) that could "lead a rational trier of fact to find" (*Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)) that Ms. Peterson "uses" the 4,500 acre tract affected by the BLM decision. As the district court correctly held, the Peterson affidavit by its terms provides *no* basis for such a finding.

The court of appeals' attempt to cure respondent's evidentiary default by presuming that it would not

have submitted an affidavit that failed to meet its burden of proof frustrates "[t]he very mission of the summary judgment procedure"—"to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." 28 U.S.C. App. 626 (Advisory Comm. Notes to 1963 Amendments to Fed. R. Civ. P. 56). For, under the court of appeals' theory, it is the mere submission—not the substance—of an affidavit that serves to defeat a motion for summary judgment.[4]

The court of appeals' presumptive injury theory also deprives defendants of substantial rights under Rule 56. As this Court has noted, "Rule 56 must be construed with due regard not only for the rights of persons asserting claims * * * that are adequately based in fact to have those claims * * * [adjudicated], but also for the rights of persons opposing such claims

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[4] The court of appeals also suggested that the Peterson affidavit could be deemed "ambiguous regarding whether the adversely affected lands are the ones she uses." Pet. App. 17a. To begin with, this characterization defies the literal terms of the affidavit. At all events, respondent—the party bearing the burden of proof on standing—was required to set forth specific facts demonstrating the use by Ms. Peterson of the affected parcel of land. If the affidavit does not show such use (*i.e.*, if it is ambiguous), Rule 56 mandates the entry of summary judgment. Moreover, even if the affidavit were viewed as ambiguous regarding whether Ms. Peterson uses lands within—and not simply in the vicinity of—the 2 million acre South Pass area, it would be totally irrational for a trier of fact, based on the affidavit, to find that Ms. Peterson uses the 4,500 acre parcel affected by the BLM decision. As noted above, the affected tract comprises only .225% of the South Pass area. Under these circumstances, the only reasonable presumption would be that Ms. Peterson uses lands included in the 99.775% of the South Pass area that was not opened to mining claims by the challenged BLM decision.

* * * to demonstrate in the manner provided by the Rule, prior to trial, that the claims * * * have no factual basis." *Celotex*, 477 U.S. at 327. Here, the court of appeals' utter disregard of petitioners' rights under Rule 56 has placed a cloud over numerous beneficial land exchanges between the BLM and Farm Bureau members—even though virtually none of those transactions even arguably threatens the aesthetic interests espoused by respondent.[8]

II. THE COURT OF APPEALS ERRONEOUSLY CONCLUDED THAT USE OF A SINGLE PARCEL OF LAND SUBJECT TO A CLASSIFICATION TERMINATION GAVE RESPONDENT STANDING TO CHALLENGE ALL BLM CLASSIFICATION TERMINATIONS AND WITHDRAWAL REVOCATIONS.

As shown above, respondent has no standing to challenge the legality of the land use decision relating to the 4,500 acre tract in Wyoming. But even if

[8] As we explained in our *amicus* brief in support of the petition in this case (at 7-8), many of the western members of the Farm Bureau are neighbors to the public lands. Often historic land ownership patterns have evolved in ways that are inefficient for both the federal land management agencies and the neighboring farms and ranches. To increase the efficient use of both public and private lands, federal land managers and neighboring private owners frequently trade land. By allowing this suit to be heard, however, the court of appeals placed many completed trades in jeopardy. Indeed, hundreds, or perhaps thousands, of land exchanges were blocked on the 180 million acres of federal land involved in this litigation. Almost all of those exchanges were benign to respondent. Many exchanges, such as those to enhance wildlife habitat, were *beneficial* to respondent. Nonetheless, the court of appeals' decision places the judiciary in the position of supervising land exchanges in all western states based on one person's objection to possible mining activity "in the vicinity" of millions of acres of public land.

respondent's factual submission had been sufficient to establish use of the Wyoming parcel, there was no warrant for the court of appeals' further conclusion that such use permits respondent to proceed with litigation subjecting all BLM land use decisions to federal court supervision. The court's expansive conception of the scope of federal judicial power denigrates the significance of (and the core purposes served by) the Article III standing requirement.

A. Generalizations about standing are, of course, necessarily imprecise. Nonetheless, the Court has typically found standing to exist in cases where the plaintiff is among those who are the focus of (and directly harmed by) challenged governmental action —even when the relief sought would not necessarily redress the injury alleged. In *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 256, 261 (1977), for example, the Court held that a developer which had contracted, contingent upon rezoning and federal assistance, to build low- and moderate-income housing had standing to challenge the denial of rezoning even though the requested relief "would not * * * guarantee" that it could proceed because it was not certain to obtain federal subsidization. In such cases, the parties are "classically adverse," *Singleton* v. *Wulff*, 428 U.S. 106, 113 (1976), and the court is exercising its traditional judicial function at the behest of a plaintiff asserting a " 'distinct' " personal injury. *Allen*, 468 U.S. at 751 (citations omitted).

By contrast, the Court has often denied standing in cases where, as here, the plaintiff alleges he has suffered an indirect, widely-shared injury from the failure of governmental officials to conform to legal standards in the performance of their duties, includ-

ing the regulation of (and transactions with) third parties ("public law" suits).[6] These suits do not involve "classically adverse" disputes. For that reason, while "the indirectness of the injury" alleged will not "necessarily" result in a denial of standing, "it may make it substantially more difficult to meet the minimum requirement of Art. III." *Warth*, 422 U.S. at 505. Accord *Allen*, 468 U.S. at 757-758; *Simon*, 426 U.S. at 44-45.

The Court has in fact undertaken a more vigilant inquiry in public law actions to determine whether the injury alleged actually exists, and whether it was in fact caused by the challenged governmental action. The Court's decision in *Simon* is illustrative. There, the plaintiff challenged an IRS ruling extending favorable tax treatment to hospitals that provided some, but not all, services to indigents and alleged that the agency's ruling would cause fewer hospitals to provide full services to the indigents whom it represented.

[6] See, *e.g.*, *Allen*, *supra* (parents of black public school children did not have standing to challenge procedures by which the IRS enforces the prohibition on tax exemptions for racially discriminatory schools); *Valley Forge*, *supra* (taxpayers did not have standing to challenge transfer of federal property to a third-party); *Simon*, *supra* (indigent plaintiffs did not have standing to challenge an IRS ruling decreasing the amount of services hospitals had to provide to the indigent in order to qualify for certain federal tax treatment); *United States* v. *Richardson*, 418 U.S. 166 (1974) (citizen taxpayer did not have standing to request that the government be compelled to order the CIA fully to account and report its expenditures and receipts); *Schlesinger* v. *Reservists Committee To Stop The War*, 418 U.S. 208 (1974) (citizens had no standing to seek mandamus ordering the Defense Department to terminate the reserve commissions of certain Members of Congress).

Noting that the hospitals might decide not to supply full services to indigents even absent the IRS ruling, the Court denied standing, refusing to supply the "inferences" necessary to connect plaintiff's asserted injury with the challenged IRS action. 426 U.S. at 42-45.

The careful standing inquiry in public law actions reflects the Court's recognition of the special dangers posed by such litigation to the core values protected by the standing doctrine. As the Court recently observed, "the law of Art. III standing is built on a single basic idea—the idea of separation of powers." *Allen*, 468 U.S. at 752. The "exercise of the judicial power * * * affects relationships between the coequal arms of the National Government." *Valley Forge*, 454 U.S. at 473. For that reason, in applying the standing doctrine, a federal court should be guided by "the Art. III notion that federal courts may exercise power only 'in the last resort, and as a necessity,' * * * and only when adjudication is 'consistent with a system of separated powers.'" *Allen*, 468 U.S. at 752 (citations omitted).

In cases where the plaintiff is the direct target of challenged governmental action, the need for the exercise of judicial power is clear, and, under *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803), its exercise is fully "consistent with a system of separated powers." In public law cases, by contrast, the indirect (and often undifferentiated) nature of the asserted injury draws into question the necessity for resolution of the dispute by judicial rather than "political process." *United States* v. *Richardson*, 418 U.S. 166, 179 (1974). And where, as here, the plaintiff also challenges hundreds of governmental deci-

sions that are not causally related to its asserted injury and seeks relief that would require pervasive judicial supervision of the Executive's performance of its constitutionally-assigned functions, the exercise of judicial power impairs—unnecessarily—the structural values underlying the standing requirement.

As demonstrated below, the court of appeals' decision is at odds with these basic principles and countenances an impermissible encroachment on the authority of the Secretary of the Interior to make land use decisions throughout the country.

B. This case plainly falls in the public law category. Asserting its aesthetic and recreational interests, respondent challenges more than 1,250 BLM land status changes relating to public lands comprising one-thirteenth of the continental United States. In addition to a declaration that BLM acted unlawfully in connection with all of its classification and withdrawal determinations, respondent seeks an injunction prohibiting the responsible federal officials from "taking any action" inconsistent with land status designations in effect nine years ago, ordering those officials to reinstate the 9-year old designations and to "rescind all directives, instructional memoranda, manuals, or other documents providing information or guidance on the termination of land classifications or land withdrawals." Amended Complaint at 16, 17. The relief sought by respondent would appoint the federal courts "as *de facto* Secretary of the Interior over 180 million acres—nearly one-fourth of all federal lands and more than half of the public lands managed by the Bureau of Land Management." Pet. App. 85a (Williams, J., concurring and dissenting).

The sweeping nature of respondent's challenge to BLM's administration of public lands called for a rigorous application of the standing doctrine. The district court observed that respondent's affidavit submissions (even if they had been sufficient to establish use of specific parcels affected by a BLM land use decision) did "not provide any basis for standing to challenge * * * the legality of each of the 1250 or so individual classification terminations and withdrawal revocations." Pet. App. 36a. The court of appeals' contrary ruling (*id.* at 16a n.12), which permits respondent—on the basis of an affidavit that at best alleges impaired use of 4,500 acres in Wyoming—to challenge hundreds of other land use decisions in 17 states, clashes with settled limitations on standing in public law actions.

1. *Sierra Club* held that an environmental group such as respondent has no standing to challenge governmental action relating to a particular area unless it demonstrates that one of its members uses the area affected by the challenged agency action. Thus, even if respondent had shown that one of its members uses a parcel of land and therefore has standing to challenge the legality of a land use decision relating to that parcel, respondent has no standing to challenge the hundreds of BLM land status decisions from which it has suffered no injury.

The court of appeals nonetheless concluded that the "applicable law governing standing requires that [respondent] be injured by only *one*" (Pet. App. 16a n.12 (emphasis in original)) of those decisions to secure standing to challenge the rest. Pet. App. 18a n.13. The court relied on this Court's observation in *Sierra Club*, 405 U.S. at 740 n.15, that the "test of

injury in fact goes only to the question of standing to obtain judicial review" and, having established standing, "the party may assert the interests of the general public in support of his claims for equitable relief." The quoted language, however, stands simply for the proposition that once a plaintiff establishes that he has standing to challenge the legality of specific agency action, he may then assert "the public interest" in support of *that challenge*. Nothing in *Sierra Club* even remotely suggests that standing to challenge one agency decision confers upon a plaintiff an unrestricted license to challenge other agency actions in which he has no personal stake.[7]

Beyond this, the court of appeals' belief that an organization that has standing to challenge one agency decision may also challenge any other agency action that may be vulnerable to attack on the same legal theory (see Pet. App. 55a-56a) cannot be reconciled with the settled principle that "a federal court * * * is not the proper forum to press general complaints about the way in which government goes about its business." *Allen*, 468 U.S. 760 (quotation omitted). As to all of the BLM land use decisions challenged by its complaint that have caused no harm to its members, respondent's status is indistinguishable

[7] Equally misplaced is the court's reliance (Pet. App. 16a n.12) on *UAW* v. *Brock*, 477 U.S. 274 (1986), and *Warth*, *supra*. The portions of those opinions to which the court of appeals referred recite merely the uncontroversial proposition that an organization need establish that only one of its members has suffered injury in fact from the challenged action in order to have standing itself. See 477 U.S. at 282-86; 422 U.S. at 511. Neither case suggests that the organization may then challenge other agency actions that have caused no injury to its members.

from that of other concerned citizens who have sought "'to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government.'" *Valley Forge*, 454 U.S. at 483 (citation omitted). The Court has consistently rebuffed those efforts. *Id.* at 482-83; *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208 (1974); *Richardson*, *supra*.

In sum, respondent cannot be permitted to use an alleged aesthetic injury from a single land use decision as a pretext for an assault on all federal land use decisions throughout the Nation "without draining" the "requirements [of Article III] of meaning." *Valley Forge*, 454 U.S. at 482-83. The court of appeals' decision clearly reduces the citizen standing rule to a meaningless and easily evaded technicality.

2. Respondent's complaint charges that the more than 1,250 classification terminations and withdrawal revocations that it seeks to enjoin are part of a "program" to eliminate "protective" restrictions on public lands. Amended Complaint ¶¶ 1, 6. In its earlier panel opinion, the court of appeals erroneously relied on this characterization to justify relieving respondent of its obligation to establish the requisite personal stake in any land use decision that it seeks to enjoin. See Pet. App. 55a.

To begin with, respondent's rhetoric cannot alter the fact that it is challenging hundreds of separate land use decisions over the course of several years. See Pet. 5 (explaining the process by which the distinct land use decisions were reached). There was no single agency action—"program"—lifting the protected status of public lands throughout the nation. Many of the classification terminations and withdrawal revocations initiated by BLM pursuant to

FLPMA do not open additional lands to the staking of mining claims or any other activity that bears any conceivable relation to the aesthetic interest that respondent purports to espouse through this litigation. See Pet. App. 100a-101a (Williams, J., concurring and dissenting). Indeed, among the land use decisions challenged by respondent's complaint were changes that "all viewed as environmentally beneficial." Pet. 8.

Thus, respondent's "program" rhetoric amounts to nothing more than a contention that the federal officials to whom Congress delegated the authority to make land use decisions—see, *e.g.*, 43 U.S.C. § 1714(a) ("the Secretary is authorized to make, modify, extend, or revoke withdrawals")—exercised that responsibility in accordance with the prevailing policy preferences in the Executive Branch. However, "an agency to which Congress has delegated policymaking responsibilities may, within the limits of the delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments." *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 865 (1984).

Moreover, the alleged programmatic goals of federal land administrators could, at most, be described as a "general statement of policy" not subject to challenge under the APA because they would "not establish a 'binding norm' " or be "finally determinative of the issues or rights to which [they are] addressed." *Pacific Gas & Elec. Co.* v. *FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974) (footnote omitted). Only the actual classification terminations and withdrawal revocations constitute agency action reviewable under the APA, and respondent may not circumvent the Article III injury requirement by framing its complaint as a challenge to the purported policy preferences of the petitioners.

More fundamentally, respondent's sweeping challenge to the alleged BLM "program" runs afoul of the separation of powers principles on which the standing requirement is based. To conclude that respondent has been injured by policy preferences of federal land managers "would pave the way generally for suits challenging, not specifically identifiable Government violations of law, but the particular programs agencies establish to carry out their legal obligations. Such suits, even when premised on allegations of several instances of violations of law, are rarely if ever appropriate for federal-court adjudication." *Allen*, 468 U.S. at 759-760.

Beyond this, strict adherence to standing limitations is "especially important" in cases where, as here, "the relief sought produces a confrontation with one of the coordinate branches of the Government." *Schlesinger*, 418 U.S. at 222. The relief sought by respondent would constitute " 'the federal courts as virtually continuing monitors of the wisdom and soundness of Executive action.' " *Allen*, 468 U.S. at 760 (quoting *Laird* v. *Tatum*, 408 U.S. 1, 15 (1972)). Respondent seeks to halt and reverse all classification terminations and withdrawal revocations throughout the Nation, and to rescind all internal directives and memoranda relating to such land use decisions. Here, as in *Allen*, recognition of respondent's standing "to seek a restructuring" of the program allegedly "established by the Executive Branch to fulfill its legal duties" would "run[ ] afoul of [the] structural principle" that the "Constitution, after all, assigns

to the Executive Branch, and not to the Judicial Branch, the duty to 'take Care that the Laws be faithfully executed.'" *Allen*, 468 U.S. at 761 (citation omitted).

3. Finally, standing doctrine "reflects a due regard" for those persons most affected by governmental action and seeks to prevent the disruption of mutually-advantageous arrangements by "'bystanders.'" *Valley Forge*, 454 U.S. at 473 (citation omitted). Respondent's efforts to rescind all classification terminations and withdrawal revocations throughout seventeen states clashes with this salutary principle.

As demonstrated by the number of *amici* supporting petitioners, those persons with a direct interest in the lands that respondent's members do not use have clearly found the BLM land status changes advantageous. The interests of Farm Bureau members alone (see note 5, *supra*) attest to this fact.

Nor can the court of appeals' decision be justified on the theory that recognition of respondents' standing to challenge all land use decisions is necessary to ensure that those decisions were formulated in accordance with procedural requirements. Those in fact harmed by any land status change may seek redress. And it is not the mission of the federal courts to ensure that harmless decisions are made in strict compliance with abstract legal standards. Rather, "federal courts may exercise power only 'in the last resort, and as a necessity.'" *Allen*, 468 U.S. at 752 (citation omitted).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

JOHN J. RADEMACHER
General Counsel
American Farm Bureau Federation
225 Touhy Avenue
Park Ridge, Illinois 60068
(312) 399-5732

KATHRYN A. OBERLY
Counsel of Record
JOHN E. MUENCH
KERRY EDWARDS CORMIER
JEFFREY M. WINTNER
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 778-0611
Counsel for Amici Curiae

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